

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

TIMOTHY CHEETHAM, SR.,

Petitioner,

vs.

STATE OF MONTANA, ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,

Respondents.

CV 20–50–H–DLC–JTJ

ORDER

On November 12, 2020, United States Magistrate Judge John Johnston entered his Findings and Recommendation recommending that Petitioner Timothy Cheetham’s application for writ of habeas corpus under 28 U.S.C. § 2254 be denied. (Doc. 3.) Cheetham does not object. A party is only entitled to de novo review of those findings to which he or she specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

There is no clear error in Judge Johnston’s determination that claims 1 and 2 of Cheetham’s petition should be denied because he failed to establish that trial

counsel's performance in electing not to introduce the Salisbury report (*see id.* at 2–3) was deficient—a necessary component of an ineffective assistance of counsel claim under *Strickland v. Washington*, 466 U.S. 668 (1984). (*Id.* at 10–11.) There was also no clear error in the Magistrate's assessment that claim 3 should be denied for the same reason. The Court agrees that trial counsel's tactical decision to advise Cheetham not to take the stand but ultimately leave the decision to him was not unreasonable. (*Id.* at 14.) The Court agrees and adopts Judge Johnston's recommendation that all of Cheetham's claims lack merit and therefore do not survive review under the Antiterrorism and Effective Death Penalty Act. Because jurists of reason could not disagree, the Court denies a certificate of appealability.

IT IS ORDERED that Judge Johnston's Findings and Recommendation (Doc. 3) is ADOPTED in full.

1. Cheetham's Petition (Doc. 1) is DENIED.
2. The Clerk of Court is directed to enter judgment in favor of Respondent and against Petition.
3. A certificate of appealability is DENIED.

DATED this 28th day of December, 2020.



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Dana L. Christensen, District Judge  
United States District Court